S.B. Civil Revision Petition No.256/2007
Kanhyalal Surendra Kumar Pisran & Ors
vs
State of Rajasthan & anr.

Date of order : 26.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Sandeep Saruparia, for the petitioners.

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Heard learned counsel for the petitioners.

It appears that a suit was filed against the Municipal Board, Aasind, Bhilwara therein the plaintiffs' case was that they are tenants of the Municipal Board. The Municipal Board's contention was that the plaintiffs encroached some portion of the Varamada which was in front of the shops and they put their shutters also. The trial court decreed the suit of the plaintiffs-tenants only that the respondent Municipal Board shall not dispossess the plaintiffs-petitioners from the shops which are in their tenancy without following the process of law.

The non-petitioner Municipal Board started process of eviction of the petitioners from the part of the property which according to the Municipal Board is the area of Varamada kept for public purpose and upon which, the petitioners have put their shutters. The petitioners, therefore, submitted the petition under Order 21 Rule 32 CPC alleging that by

that the Municipal Board has violated the decree and therefore, the officers of the Municipal Board may be sent to the civil imprisonment. The petitioner's said application was dismissed by the trial court vide order dated 9.10.2007.

The executing court considered the Commissioner's report, which was given by the Commissioner appointed in the civil suit's proceedings. The executing court held that the Municipal Board has right to remove the encroachment and the petitioners are not being removed from their tenanted shops, which were let out to them.

Learned counsel for the petitioners submits that the non-petitioner Municipal Board cannot remove them from the property which is in their possession without following the process of law. It is also submitted that the court below committed serious error of law by relying upon the Commissioner's report only. It is submitted that petitioners are in possession of the entire premises as tenant and they have not encroached any portion of Varamada.

After going through the reasons given by the court below it appears that the petitioners could place on record any proof that Municipal Board is not removing them from the leased portion and is not removing from the portion, which was of the Varamada and meant for public. There is no material placed on

record by the petitioners with respect of the dimension of the let out property.

In view of the above facts, no case is made out for initiation of proceedings under Order 21 Rule 32 and the executing court rightly dismissed the application.

In view of the above, I do not find any merit in this revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-